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C O N F I D E N T I A L SECTION 01 OF 04 BUENOS AIRES 001521

SIPDIS

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TAGS: [EFIN](#) [ECON](#) [PREL](#) [PGOV](#) [AR](#)

SUBJECT: ARGENTINE PENSION NATIONALIZATION STATUS:  
CONGRESS DEBATES LAW, PENSION FUNDS GO ON OFFENSIVE, U.S.  
COURT FREEZES ACCOUNTS

REF: A. BUENOS AIRES 1491

[1](#)B. BUENOS AIRES 1490

[1](#)C. BUENOS AIRES 1475

[1](#)D. BUENOS AIRES 1466

[1](#)E. BUENOS AIRES 1458

[1](#)F. BUENOS AIRES 1442

Classified By: Charge d'Affaires Thomas P. Kelly for Reasons 1.4 (b,d)

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Summary  
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[1](#)1. (C) The Argentine government's plan to nationalize the private pension system continues to dominate headlines and drive domestic market developments. Argentina's lower house is expected to pass the GoA's draft bill November 6 or 7, albeit with the GoA reportedly agreeing to modifications, including tighter controls over the use of future contribution flows. The pension funds have begun a public relations offensive to improve their image and influence the debate in Congress, especially in the Senate. Private support for the pension funds is increasing as other companies realize the GoA could target them in the future. A U.S. Federal Judge has frozen private pension fund assets in the U.S. (as well as those of the GoA pension system), in response to U.S. "Holdout" bondholder lawsuits. The pension funds will appeal the rulings as part of their fiduciary responsibility, beginning November 6. President Kirchner strongly criticized the action of U.S. courts November 3, emphasizing that the pension assets belong to the pensioners.  
End Summary.

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Chamber of Deputies Approval Expected, With Changes  
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[1](#)2. (SBU) The GoA's plan to nationalize private pension funds (known locally as AFJPs) continues as the main topic of discussion in the country. Argentina's Chamber of Deputies is currently debating the GoA's draft bill in committees, and will reportedly bring it to a floor vote as early as the end of this week (November 6-7). According to press reports, confirmed by Post's contacts among AFJPs, the GoA is putting heavy pressure on the Chamber to expedite the process.

[1](#)3. (SBU) The consensus in the press and among Post's contacts is that the Chamber will pass the bill. Nevertheless, it

also appears that the GoA may accede to demands from the opposition for changes. According to press, the GoA's main accommodation seems to be that it will agree to tighter controls over the use of funds. This would reportedly include limits on the percentage of annual pension contributions that the GoA's Social Security Administration (ANSES) will be able to use to purchase GoA debt instruments. (ANSES will administer the Private Pension Funds' assets upon nationalization.)

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AFJP Offensive to Improve Image, Influence Senate  
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¶4. (C) Argentine daily La Nacion reported over the weekend that the AFJPs planned to send the GoA a "proposal" on November 3, suggesting various changes to the GoA's draft pension nationalization bill. However, MetLife's Country Manager for Argentina, Luisategana (PROTECT), told Econoff November 3 that the initiative is really more of a public relations offensive by the eight (of ten) AFJPs that are still members of the AFJP Association. (Two small AFJPs that are reportedly close to the GoA resigned from the association).

¶5. (C) Lategana said that the AFJPs decided to give an exclusive to La Nacion over concerns that several other papers, notably largest daily circulation Clarin, seemed to be supporting the GoA's criticism of the private pension system. However, La Nacion oversold the "proposal," which he called mostly a list of suggested discussion topics that should be considered during any reform of the country's

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broader pension system. The idea is to counter the negative press about AFJPs, reinforce the idea that pension funds assets are the private property of contributors, and attempt to influence the debate in Congress.

¶6. (C) While Lategana downplays any chance the AFJPs have of influencing the Chamber's vote, they hope to influence the debate in the Senate. (As reported reftels, most of Post's contacts believe the GoA will have a tougher time getting the bill through the Senate.) Lategana added that the pro-AFJP demonstration scheduled for November 5 is also important for demonstrating to the Senate the potential political costs of the nationalization and broad public and private sector support for the private system.

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Private Sector Opposition to GoA Initiative Builds  
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¶7. (SBU) Other private companies and business associations have begun to voice support for the pension funds, or at least opposition to the nationalization of the private system. In particular, the countries' two largest business associations -- the Argentine Industrial Association (UIA) and Argentine Business Association (representing heavyweights Arcor and Techint) -- made statements calling for the respect of private property and the rule of law. Some farming groups have also voiced support, and have committed to participating in the November 5 demonstration in Buenos Aires.

¶8. (C) This issue also dominated discussions during the October 30-31 annual IDEA conference (representing the foreign and domestic private sector in Argentina), where many participants voiced concerns about both the GoA measure and the possibility that the GoA may target other parts of the private sector in the future. Lategana agreed with the analysis that private companies and associations are becoming more vocal as they have come to realize they could become the GoA's next targets. However, he also saw it as a natural response to the market's extremely negative reaction following the GoA's October 21 announcement of the initiative. (See reftels for background.)

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New York Courts Freeze AFJP Assets  
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¶9. (C) As anticipated in past Post reporting, in response to lawsuits filed by so-called "Holdout" bondholders (those who did not participate in Argentina's 2005 sovereign debt exchange), Federal Judge Thomas Griesa has frozen the AFJPs' assets in the U.S. Griesa is the Federal Judge for the U.S. District Court for the Southern District of New York who's court has handled the majority of Holdout lawsuits against the GoA and Argentine Central Bank (BCRA). An Economy Ministry official working on legal issues in the Ministry's Office of Public Debt told Econoff October 31 that GoA U.S. legal counsel Cleary Gottlieb believes that Griesa has a good understanding of the issue and likely does not intend to approve the attachment of the AFJP assets at this time. However, according to the Economy Ministry official, GoA legal counsel believe that Griesa is completely fed up with Argentina, given its failure to resolve holdout lawsuits since 2005, and may therefore continue the freeze until there is a "noble cause to release the funds, such as paying out to AFJP contributors."

¶10. (C) According to Met's Lategana, the GoA's Superintendent of Pension Funds has publicly instructed the AFJPs to appeal Griesa's decision, and initially strongly recommended that they use the GoA's U.S. law firm (Cleary Gottlieb). Lategana called this a double mistake on the part of the government, which should be working to demonstrate the independence of the AFJPs for the purposes of the U.S. court case. He said the AFJPs were already obliged under Argentine law, as part of their fiduciary responsibilities, to fight the U.S. court order, and the GoA's initial position just showed that the GoA has already begun to take them over. Instead, he said, the eight remaining members of the AFJP association have hired a different U.S. law firm and will begin their appeal

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before Griesa on November 6. Lategana believes the AFJPs have a good case, based on the argument that as of this time the assets are the private property of the AFJP contributors.

However, he notes that the interesting question is whether Chamber of Deputies' approval of the bill later this week would undermine the AFJPs' case and convince Griesa to continue the hold.

¶11. (C) There are different estimates of the total amount embargoed. Argentine press have reported a total in the billions of dollars, while Lategana roughly calculates total U.S. investments at about \$400 million, held in U.S. banks and at the Depository Trust and Clearing Corporation. (This calculation is based on Met's \$80 million in U.S. assets and the fact that Met holds roughly 20% of all AFJP assets.) Lategana notes that the AFJPs were allowed to invest up to 10% of total assets abroad (not including investments in other Mercosur countries), so the total -- and maximum attachable amount -- is in the range of \$2-3 billion. However, he noted that most of these funds are invested or held in Europe, and confirmed private comments from other AFJP contacts that the AFJPs are holding sizable deposits with Euroclear. Post also understands from other AFJP contacts that the AFJPs were also allowed to keep dollar-denominated deposits with DTCC, Euroclear, and Clearstream, in order to pay for trades and also because the AFJPs are prohibited from holding dollar-denominated accounts within Argentina. These deposits apparently do not count against the 10% limit, so the amounts held outside Argentina may be larger than Met calculates.

¶12. (C) Griesa has also reportedly frozen ANSES assets held in the U.S. These were funds that the AFJPs transferred to ANSES as part of the GoA's 2007 reform to the private pension system. Under this reform, the GoA gave contributors the right to switch to the GoA's pay-as-you-go system. Fewer

than 20% made the switch, but this still required the AFJPs to transfer assets to ANSES, some of which were overseas investments. (Lategana comments that ANSES' failure to liquidate these positions after a year is an indication of the internal disorganization and mismanagement prevailing at ANSES.) These assets may be more vulnerable to attachment than are the AFJP assets, according to Post's contact in the Economy Ministry's Public Debt Office.

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President Slams U.S. Court Decision, While Acknowledging  
Pension Assets are the Private Property of Pensioners  
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¶13. (C) During a November 3 speech, President Cristina Fernandez de Kirchner strongly criticized the U.S. court decision to freeze AFJP assets, arguing that they belonged to Argentine pensioners. She sarcastically decried "the seizure of funds that belong to our retirees, funds invested in the shares of another country's companies, which have fallen in value, and not even that country, the country of free trade and free everything, will return the funds that belong to our pensioners." Ironically, Griesa's action has forced the President and other GoA officials to alter their initial public justifications of the nationalization. Whereas they had originally argued that the funds would transfer to the GoA in return for the GoA's promise to pay pension benefits in the future, the President and key aides have since begun to argue publicly that the assets belong to the pensioners themselves.

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Comment  
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¶14. (C) While the GOA's rhetorical shift may be a cynical ploy devised to persuade Griesa to release the hold, the GoA's admission could have two unintended consequences: 1) it could influence debate in Congress, which may consider this argument when debating modifications to the GoA's bill; and 2) it could affect litigation by AFJPs and contributors in Argentine courts. Indeed, local media report that an Argentine Federal Judge in Cordoba Province ordered an unnamed AFJP on November 3 to freeze the funds of an

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individual contributor. Although such cases frequently go through years of appeals, the Judge's action may encourage other contributors (as well as the AFJPs) to be more aggressive in filing lawsuits, creating a potential legal headache for the GoA in the future.

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